S.B. Sales Tax Revision Petition No. 119/2005

Assistant Commissioner, AE-III, Rajasthan, Jaipur

Versus

M/s Rajasthan Rajya Sahkari Spinning
& Ginning Mills Federation Ltd., Hanumangarh

September 7, 2007

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Brij Sharma on behalf of Mr. R.B. Mathur for the petitioner
Mr. J.N. Sharma with Mr. Alkesh Sharma for the respondent

Heard learned counsels.

The controversy involved in this case is as to whether the HSD (diesel) and lubricant used in diesel generator for production of energy used for manufacture of yarn within the industrial unit of the respondent assessee, can be purchased at concessional rate of 3% against Form ST-17. The Tax Board has held in favour of the respondent assessee by the impugned order that the said commodity, namely HSD and lubricant can be purchased as raw material at concessional rate of 3% and not as processing articles at 4%. The Revenue is in revision petition before this court.

Both the learned counsels agree that the controversy now stands covered by a recent judgment of the Hon'ble Supreme Court in the case of ***Commercial Taxation Officer, Udaipur Vs. Rajasthan Taxchem Ltd.*** reported in **(2007) 17 Tax Update 171 (SC)**. The relevant extract of the said judgment is reproduced hereunder for ready reference :-

> *"In the instant case, it can be seen that the respondent has purchased diesel as raw material and utilized the same for the purpose specified in the registration certificate and thus no condition is violated for invoking the provisions of Section 10(2) of the Act.*
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> *In view of the fact that the diesel is being used for the purpose of running the generator set for the production of the ultimate product which is also required for the purpose of manufacturing the end product the diesel can only be termed as raw material and not otherwise. The Rajasthan Tax Board was, therefore, justified in setting aside the orders passed by the Assessing Authority as confirmed by the Deputy Commissioner (Appeals).*
>
> *To avail the concessional rate of tax under Section 10, the assessee has to satisfy 3 conditions:*
>
> *(a) he must be a registered dealer of any raw material;*
>
> *(b) raw material must be used for the manufacture of goods; and*
>
> *(c) the said manufacture in the State should be for the purpose of sale by him within the State or in the course of inter-state trade or commerce or in the course of export outside the territory of India.*

The respondent before us satisfy all the above tests and, therefore, the assessee-respondent, in our opinion, shall be entitled to such concessional rate as may be notified by the State Government.

The respondent-assessee used diesel as raw material for the manufacture of the end product, namely, yarn and fabric. The diesel used by the assessee is a fuel and lubricant as defined under Section 2(34) of the Sales Tax Act."

In view of above position, there is no force in the present revision petition. Consequently, this revision petition is dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 1 (Suppl.)